Office - Supreme Court, U.S.
FILED
JAN 9 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-150, 81-546

IN THE

Supreme Court of the United States

October Term, 1981

NORTHERN PIPELINE CONSTRUCTION CO.,
Appellant,

vs.

MARATHON PIPELINE COMPANY and
UNITED STATES OF AMERICA,
Appellees,

UNITED STATES OF AMERICA,
Appellant,

vs.

MARATHON PIPELINE COMPANY and
NORTHERN PIPELINE CONSTRUCTION CO.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA, FOURTH DIVISION

BRIEF FOR APPELLANT NORTHERN PIPELINE CONSTRUCTION CO.

JOHN L. DEVNEY
JEFFREY F. SHAW
BRIGGS AND MORGAN
2200 First National
Bank Building
St. Paul, Minn. 55101
(612) 291-1215
Attorneys for Appellant
Northern Pipeline
Construction Co.

224-7631 — Review Publishing Co., 267 E. 6th St., St. Paul, Minn. 55101 — 224-7631

QUESTION PRESENTED

Whether Congress has the power to delegate the jurisdiction provided in 28 U.S.C. § 1471 to bankruptcy judges lacking Article III requisites as to tenure and compensation.

TABLE OF CONTENTS

	Page
Question Presented	i
Opinions Below	2
Jurisdiction	2
Constitutional and Statutory Provisions Involved	2
Statement of the Case	3
1. Procedural History	3
2. The Bankruptcy Reform Act	5
Summary of Argument	7
Argument	9
A. The Decision of the District Court is in Error.	9
B. Legislative Courts Created Under Article I Previously Have Decided Plenary Actions.	10
C. Bankruptcy Courts Do Not, and Cannot, Exercise the "Judicial Power of the United States."	13
D. Bankruptcy is a Specialized Area Having Particularized Needs and Warranting Distinctive Treatment.	17
E. Constitutional Safeguards Have Been Provided by Congress in Enacting the Act.	19
Conclusion	22

TABLE OF AUTHORITIES

Page

Cases:

American Insurance Co. v. Canter, 26 U.S. (1 Pet.) 511 (1828) 10, 11

Bakelite Corp., Ex parte, 279 U.S. 438 (1929) 10, 11

Cary v. Curtis, 44 U.S. (3 How.) 236 (1845) 11

Crowell v. Benson, 285 U.S. 22 (1932) 10, 12, 20

Dynes v. Hoover, 61 U.S. (20 How.) 65 (1858) 11

Glidden Company v. Zdanok, 370 U.S. 530 (1962) 15

Katchen v. Landry, 382 U.S. 323 (1966) 18

Lockerty v. Phillips, 319 U.S. 182 (1943) 13

Muskrat v. United States, 219 U.S. 346 (1911) 13, 17

National Mutual Insurance Co. of District of Columbia v. Tidewater Transfer Co., Inc., 337 U.S. 582 (1948) 14, 15

Palmore v. United States, 411 U.S. 389 (1973) 10, 12, 15, 18, 20, 21

Taubel-Scott-Kitzmiller Co., Inc. v. Fox, 264 U.S. 426 (1924) 17

United States v. Coe, 155 U.S. 76 (1894) 11

United States v. Raddatz, 447 U.S. 667 (1980) 20

Constitution, Statutes and Rules:

United States Constitution:

Article I, Section 8 ..... 8, 15, 17

Article III, Section 1 ..... 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20

Bankruptcy Act of 1978 Pub. L. No. 95-598, 92 Stat. 2549 *et seq.*: 3, 5

Section 405(c), 92 Stat. 2685 19

	Page
28 U.S.C. 151 (Supp. III 1979)	5
28 U.S.C. 152 (Supp. III 1979)	5
28 U.S.C. 153 (Supp. III 1979)	5
28 U.S.C. 1252 (Supp. III 1979)	2, 4
28 U.S.C. 1293 (Supp. III 1979)	19
28 U.S.C. 1293(a) (Supp. III 1979)	6
28 U.S.C. 1293(b) (Supp. III 1979)	6, 19
28 U.S.C. 1334 (Supp. III 1979)	6, 19
28 U.S.C. 1471 (Supp. III 1979)	4, 19
28 U.S.C. 1471(c) (Supp. III 1979)	5, 19
28 U.S.C. 1481 (Supp. III 1979)	6, 21
28 U.S.C. 1482 (Supp. III 1979)	6
28 U.S.C. 1332	3
28 U.S.C. 1655	3
6 B.R. 928 (D. Minn. 1981)	2
12 B.R. 946 (D. Minn. 1980)	2
Ky. Rev. Stat. §376.090	3

Miscellaneous:

H.R. Rep. No. 95-595, 95th Cong., 1st Sess. (1977)	19, 21

Nos. 81-150, 81-546

IN THE

Supreme Court of the United States

October Term, 1981

NORTHERN PIPELINE CONSTRUCTION CO.,
Appellant,

vs.

MARATHON PIPELINE COMPANY and
UNITED STATES OF AMERICA,
Appellees.

UNITED STATES OF AMERICA,
Appellant,

vs.

MARATHON PIPELINE COMPANY and
NORTHERN PIPELINE CONSTRUCTION CO.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA, FOURTH DIVISION

BRIEF FOR APPELLANT NORTHERN PIPELINE CONSTRUCTION CO.

OPINIONS BELOW

The Order and Memorandum of the District Court (A-1a)[1] are reported at 12 B.R. 946 (D. Minn. 1981). The opinion of the bankruptcy court (A-27a) is reported at 6 B.R. 928 (D. Minn. 1980).

JURISDICTION

The judgment of the District Court (A-1a) was entered on April 23, 1981.

A Notice of Appeal to this Court was duly filed by the United States of America (intervenor in the proceedings below) in the District Court for the District of Minnesota, Fourth Division, on May 19, 1981 (A-37a); a Notice of Appeal was duly filed by this appellant in the District Court of Minnesota for the Fourth Division on May 20, 1981 (A-13).[2] Probable jurisdiction was noted on November 9, 1981. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1252.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 8, United States Constitution:

> Congress shall have the power:
>
> To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;
>
> To constitute Tribunals inferior to the supreme Court;

---

[1] References to the Jurisdictional Statement of Appellant United States of America are cited as "A- ".

[2] The Notice of Appeal is set forth at A-13 of the Jurisdictional Statement of Appellant Northern Pipeline Construction Co.

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article III, Section 1, United States Constitution:

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their offices during good Behavior . . . .

Relevant provisions of the Bankruptcy Reform Act, Pub.L. No. 95-598 (Nov. 6, 1978), 92 Stat. 2549 (A-39a).

STATEMENT OF THE CASE

1. Procedural History.

Appellant, Northern Pipeline Construction Company ("Northern"), is a debtor in a proceeding for reorganization under Chapter 11 of the Bankruptcy Code.

On March 8, 1979 (prior to initiation of reorganization proceedings) Northern instituted a lawsuit against the appellee, Marathon Pipeline Company ("Marathon"), in the United States District Court for the Western District of Kentucky. Jurisdiction was based upon diversity of citizenship, 28 U.S.C. § 1332 and upon the enforcement of a mechanics lien under Kentucky Revised Statutes, § 376.090 pursuant to 28 U.S.C. § 1655.

The Complaint in the District Court asserted claims for relief arising out of the construction by Northern for Marathon of certain oil product pipelines in Jefferson County, Kentucky.

An Answer and Counterclaim were interposed by Marathon and limited discovery was undertaken by both parties.

On January 14, 1980, Northern filed a petition for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, District of Minnesota, Third Division.

On March 25, 1980, Northern, as debtor-in-possession, filed and served a Complaint against Marathon, initiating an adversary proceeding under the Bankruptcy Code. The Complaint in bankruptcy court asserted the same claims brought in the lawsuit pending in the District Court with the exception of the claim for mechanics lien relief.

Appellee Marathon moved the bankruptcy court for dismissal for lack of jurisdiction and alternatively for dismissal, abstention or transfer of the adversary proceeding, which motion was denied by the bankruptcy court on November 17, 1980.[3]

Appellee's application to the United States District Court for the District of Minnesota, Fourth Division, for leave to appeal the order of the bankruptcy court was denied on March 5, 1981. Upon appellee's motion for reconsideration, the District Court granted appellee's Motion for Leave to Appeal on March 26, 1981.

On April 23, 1981, the District Court entered an order dismissing the adversary proceeding instituted by Northern against Marathon, holding that the delegation of authority in 28 U.S.C. § 1471 to the bankruptcy judges was an unconstitutional delegation of jurisdiction.

Direct appeals to this Court pursuant to 28 U.S.C. § 1252 timely were perfected by both appellants.

---

[3] Prior to its order, the bankruptcy court granted leave to intervene to the United States of America pursuant to 28 U.S.C. § 2403(a) and Rule 24(a)(1), Federal Rules of Civil Procedure.

2. The Bankruptcy Reform Act.

After careful consideration and hearings, Congress enacted the Bankruptcy Reform Act, Pub.L.No. 95-598, 92 Stat. 2549. The legislation enacted by Congress reflects a comprehensive reform of previous bankruptcy law. At issue in this appeal is whether Congress' decision to staff the bankruptcy court with bankruptcy judges appointed to 14-year terms violates the provisions of Article III of the Constitution. Article III requires that when the "judicial power of the United States" is exercised, those exercising that power must be provided with lifetime tenure and protection against salary reduction.

The Bankruptcy Reform Act of 1978 established a new court (the United States Bankruptcy Court) in each judicial district as an adjunct to the District Court for each district. 28 U.S.C. § 151 (Supp. III 1979). The Act thus eliminated the old referee system in existence previously. Judges of the new bankruptcy courts are to be appointed to 14-year terms by the President, with the advice and counsel of the Senate, as contrasted with the old system where bankruptcy referees were appointed for six-year terms by the District Court. Bankruptcy judges under the new Act are subject to removal for incompetence, misconduct or disability by the Judicial Council of the circuit. 28 U.S.C. §§ 152, 153 (Supp. III 1979).

Another important change effected by the Act is the abolition of the distinction between summary and plenary jurisdiction. Under the new Act, bankruptcy courts may exercise jurisdiction of "all civil proceedings arising under Title 11 or arising in or related to cases under Title 11." 28 U.S.C. § 1471 (c) (Supp. III 1979). Thus, bankruptcy courts created under the Act are allowed greater powers than those bestowed under previous legislation. Although the bankruptcy courts

"shall have the powers of a court of equity, law and admiralty" the courts' powers have been limited by Congress. Bankruptcy courts may not enjoin another court or punish a criminal contempt not committed in the presence of the judge of the court or warranting a punishment of imprisonment. 28 U.S.C. § 1481 (Supp. III 1979).

Finally, the new Act provides an appeals procedure which ensures that review will be made by an Article III judge. A panel of three bankruptcy judges to hear appeals may be designated by the Chief Judge of the circuit. 28 U.S.C. § 160. These panels would have jurisdiction of all appeals from final orders of the bankruptcy courts and, with leave of the panel, of interlocutory appeals. 28 U.S.C. § 1482. In the event that no such panel is designated, the District Court would undertake appellate review. 28 U.S.C. § 1334 (Supp. III 1979). The Court of Appeals is empowered to hear appeals from either the appellate panel (if designated) or the District Court. 28 U.S.C. § 1293(a) (Supp. III 1979). Upon agreement of the parties, a direct appeal to the Court of Appeals may be taken from a final judgment of the bankruptcy court. 28 U.S.C. § 1293(b) (Supp. III 1979).

This appeal is a result of a perceived conflict between Article I and Article III.

SUMMARY OF ARGUMENT

The decision of the United States District Court below is erroneous.

It cannot be argued that Congress lacks the power to create some kind of bankruptcy court to administer such "uniform laws on the subject of bankruptcies." Further, it cannot be seriously contended that Congress lacks the power to create some form of a bankruptcy court staffed by judges lacking Article III protection as to tenure and compensation.

Stripped to its essence, the decision of the District Court is premised upon the view that Congress created the *wrong* kind of court, i.e., a court which may entertain plenary actions as well as summary proceedings. The District Court reasoned that plenary actions are capable of determination only by Article III courts exercising the judicial power. This premise led the Court below to its conclusion that the grant of jurisdiction by Congress to courts whose judges lacked Article III protection as to tenure and compensation was unconstitutional. This reasoning process discloses its own error.

The Constitution allows Congress to create "legislative courts" under Article I as well as inferior federal courts which exercise Article III judicial power.

Although Article I courts may not receive Article III "judicial power," nevertheless, this prohibition does not prevent legislative courts from deciding disputes and questions which may also be decided by Article III courts as long as the disputes and questions for decision are properly within one of the enumerated areas for which legislative courts may be established under Article I. For example, plenary actions are decided by non-Article III state courts. Plenary actions may also be decided by Article I courts without offense to Article

III. The mere fact that a legislative court may decide plenary suits and in doing so act in a "judicial" manner does not mean that such a legislative court exercises the "judicial power of the United States." Legislative courts can try criminal cases, construe contracts and determine breaches thereof, and adjudicate land titles, etc., but this in and of itself does not make legislative courts Article III courts.

The critical distinction between Article I and Article III courts lies in the nature of their jurisdiction. Article I legislative courts are restricted in their jurisdiction to proceedings which arise within the limited context of the specific power enumerated in Article I by which that legislative court is created—that specialized area described by the specific power. Article III courts, on the other hand (although their jurisdiction is limited by the terms of Article III), are free to determine cases and controversies within their jurisdiction to the full extent provided by Article III and without any limitation on their exercise of judicial power of the kind imposed on legislative courts by Article I. Put another way, legislative courts can only function within the limits of an enumerated power of Article I while Article III courts are permitted to entertain all controversies of whatever nature that fall within their jurisdiction.

Specifically as it relates to this appeal, bankruptcy courts can entertain a plenary action only where there is a bankruptcy as provided for by Article I, § 8. Bankruptcy courts do not have the power to entertain plenary actions except insofar as such actions are necessary to effectuate uniform laws on the subject of bankruptcies granted to Congress by Article I, § 8. Thus, bankruptcy courts established by this Act are properly constituted Article I courts and need not meet Article III requisites. . .

Additionally, Congress incorporated several provisions into the Act to ensure that any perceived constitutional objection to the legislation would be met. Accordingly, provisions relating to the jurisdiction and supervision of the bankruptcy courts, the scope of powers of the bankruptcy judges, and the appellate review available of right were specifically included in the Act. The bankruptcy courts operate as adjuncts to, and thus subordinate to, the District Courts. The decisions made in the bankruptcy courts may be reviewed either by the District Courts or by Courts of Appeals.

For the reasons set forth herein, the decision of the District Court should be reversed.

ARGUMENT

A. The Decision of the District Court is in Error.

The sole issue presented by appellee's interlocutory appeal from the bankruptcy court to the District Court was whether the Bankruptcy Act's grant of jurisdiction to the bankruptcy court was an unconstitutional delegation of Article III jurisdiction to judges lacking Article III requisites. The District Court agreed with appellee's contentions, found the Act unconstitutional and directed a dismissal of appellant Northern's adversary proceeding against the appellee (A-1a - 2a).

The court below was troubled by the grant of jurisdiction of plenary matters and found that grant to be "amazingly broad as it encompasses claims based on both federal and state law." (A-7a). In the opinion of the District Court, bankruptcy courts created by the Act have been "endowed with the full array of judicial powers" with minor exceptions (A-9a). The District Court therefore concluded that bankruptcy judges exercise virtually the same power as District

Court judges (A-10a).[4] The court reasoned that since actions heard by the bankruptcy court may include cases which fall within the scope of Article III "judicial power", therefore the delegation of jurisdiction was unconstitutional (A-24a).

The error of the District Court's decision lies in its misapprehension of the nature of legislative courts under Article I and the nature of "judicial power" under Article III.

B. Legislative Courts Created Under Article I Previously Have Decided Plenary Actions.

Although the appropriate sphere of judicial activity by legislative courts created under Article I has been the subject of disagreement and debate, some fundamental principles concerning the nature of Article I courts have emerged.

Under Article I Congress is empowered to create "legislative courts" which may perform judicial functions. *American Insurance Co. v. Canter*, 26 U.S. (1 Pet.) 511 (1828). Legislative courts may be created by Congress to adjudicate disputes falling within specialized areas enumerated in Article I. *Palmore v. United States*, 411 U.S. 389 (1973). Congress has the authority to create legislative courts with jurisdiction over matters of national concerns and its power to create such courts is not limited to matters of territorial or local concern. *Ex parte Bakelite Corp.*, 279 U.S. 438, 449 (1929); *Crowell v. Benson*, 285 U.S. 22, 54 (1932). While Article I courts do not and cannot receive the "judicial power of the United States," *American Insurance Co. v. Canter, supra*, Congress may grant legislative courts jurisdiction over matters previously within the jurisdiction of Article III courts.

---

[4] The court stated:

> "Yet while the new bankruptcy judges hear virtually the same range of matters and exercise nearly identical powers as an Article III district judge, these new judges are not Article III judges but rather Article I judges." (A-10a).

Cary v. Curtis, 44 U.S. (3 How.) 236 (1845). Judges of validly constituted legislative courts may be appointed for such terms and at such compensation as Congress may determine unaffected by the requisites of Article III. *Ex parte Bakelite Corporation, supra.*

Legislative courts have always been recognized as appropriate forums for the decision of both federal and state law questions. A brief review of some Article I court decisions includes the following areas:

1. Claims in admiralty — *American Insurance Co. v. Canter, supra*;[5]
2. Claims for customs' taxes — *Cary v. Curtis, supra*;[6]
3. Court martials for military and naval offenses — *Dynes v. Hoover*, 61 U.S. (20 How.) 65 (1858);
4. Claims under the Tariff Act — *Ex parte Bakelite Corporation, supra*;
5. Claims for determination of private land claims in certain western states and territories — *United States v. Coe*, 155 U.S. 76 (1894);[7]

---

[5] Although the question in Canter was limited to a claim in admiralty, the decision validated the Congressional grant to the territorial Legislature of Florida for the establishment of a territorial court possessing jurisdiction over criminal cases, civil cases and all cases falling under the laws and Constitution of the United States as well as the jurisdiction invested in the court of the Kentucky District.

[6] Cary involved a claim brought in the Circuit Court for the Southern District of New York to recover monies paid for customs' duties. An Act of Congress had granted exclusive jurisdiction to the Secretary of the Treasury in such matters. The Court held that the Act did not offend Article III.

[7] The Coe decision upheld the constitutionality of an Act creating a private land claims court to determine Spanish or Mexican title in the territories of New Mexico, Arizona and Utah and in the States of Nevada, Colorado and Wyoming. While Coe dealt with lands in the territory of Arizona, this Court in Ex parte Bakelite Corporation, supra, noted that the decision in Coe would apply equally to lands within the states. 279 U.S. at 415.

6. Claims for maritime personal injury — *Crowell v. Benson*,[8] *supra*; and

7. Prosecution for crimes in the District of Columbia — *Palmore v. United States, supra.*

All of the claims noted above entail "plenary" actions of one type or another and all such "plenary" actions could be the subject of either state or federal jurisdiction. The District Court's concerns about plenary actions were, therefore, misplaced since it is clear that the mere grant of plenary authority to a legislative court is not in and of itself improper or unconstitutional. To be unconstitutional, the Article I

[8] The Court in Crowell affirmed provisions of the Longshoremen's and Harbor Workers' Compensation Act which delegated authority to the Deputy Commissioner of the United States Employees Compensation Commission to make awards concerning injured employees. Justice Brandeis, in dissent to the majority holding that de novo review avoided any conflict with Article III, argued that nothing in the Act provided for de novo review and that no conflict existed between the Act and Article III. He analyzed the matter as follows:

> The "judicial power" of Article III of the Constitution is the power of the federal government and not of any inferior tribunal. There is in that Article nothing which requires any controversy to be determined as of first instance in the federal district courts. The jurisdiction of those courts is subject to the control of Congress. Matters which may be placed within their jurisdiction may instead be committed to the state courts. If there be any controversy to which the judicial power extends that may not be subjected to the conclusive determination of administrative bodies or federal legislative courts, it is not because of an prohibition against the diminution of the jurisdiction of the federal district courts as such, but because, under certain circumstances, the constitutional requirement of due process is a requirement of judicial process. Accumulation of precedents, already referred, has established that in civil proceedings involving property rights determinations of facts may constitutionally be made otherwise than judicially; and necessarily that evidence as to such facts may be taken outside of a court. I do not conceive that Article III has properly any bearing upon the question presented in this case. 285 U.S. at 86-87.

jurisdiction must intrude into Article III "judicial power of the United States" granted the Supreme Court and such inferior federal courts as Congress may see fit to create.

C. Bankruptcy Courts Do Not, and Cannot, Exercise the "Judicial Power of the United States."

Both legislative and Article III courts (as well as state courts) possess "judicial power." "Judicial power" is nothing more than "the power of a court to decide and pronounce judgment and carry it into effect between persons who bring a case before it for decision". *Muskrat v. United States*, 219 U.S. 346, 356 (1911). The "judicial power of the United States" as provided by Article III is distinct from "judicial power" generally. It is a power restricted to the limits established by that Article but *exercised to the fullest extent within those limits. Muskrat v. United States, supra.*

For example, the Tax Court, an Article I court, has the "judicial power" to decide controversies relating specifically to taxation. Its jurisdiction, however, is limited solely to that enumerated area. A federal district court, on the other hand, as an Article III court possesses the "judicial power of the United States" and therefore can decide cases or controversies of any nature—personal injury, antitrust, commercial disputes, criminal matters, etc.—falling within its jurisdiction.

The "judicial power of the United States" is not defined, then, by the nature of the actions which may be decided nor by an exclusive right to decide such actions. As noted by this Court in *Lockerty v. Phillips*, 319 U.S. 182, 187 (1943):

> The congressional power to ordain and establish inferior courts includes the power "of investing them with *jurisdiction either limited, concurrent, or exclusive*, and of withholding jurisdiction from them in the exact

> degree and character which to Congress may seem proper for the public good. (Emphasis added).

Concurrent jurisdiction of constitutional courts, state courts and legislative courts, each operating within its proper realm, was the subject of comment by Justice Vinton in his dissent in *National Mutual Insurance Co. of District of Columbia v. Tidewater Transfer Co., Inc.*, 337 U.S. 582 (1948) where he stated:

> What has been said does not mean, of course that legislative courts cannot exercise jurisdiction over questions of the same nature as those enumerated in Article III § 2. It was clearly contemplated by the framers that state courts should have federal question jurisdiction concurrent with that exercised by inferior federal courts, yet they are not constitutional courts nor do they exercise the judicial power of Article III. The legislative courts created by Congress also can and do decide questions arising under the Constitution and the Laws of the United States (and in the case of territorial courts, other types of jurisdiction enumerated in Article III, § 2, as well), but that jurisdiction is not and cannot be, "a part of the judicial power which is defined in the Third Article of the Constitution." These courts are "incapable of receiving it." 337 U.S. 641.

Perhaps this point—that Article I courts can decide cases of the same nature as Article III courts—has caused the greatest difficulty in the reasoning which has been brought to the entire subject of Article I and Article III courts. However, the fact that courts may decide the same questions and yet be distinct under the Constitution is not meaningless as

Justice Vinton, again in *Tidewater, supra*, noted at 337 U.S. 644:

> It may be argued that the distinction between constitutional and legislative courts is meaningless if the latter may be invested with jurisdiction over subjects of Article III judicial power. But there are limitations which insure the preservation of the system of federal constitutional courts distinct from legislative courts. In the first place, *a legislative court must be established under some one of the specific powers given to Congress, and it is unlikely that all of the subjects of the judicial power could be justified as an exercise of those powers.* Furthermore, we cannot impute to Congress an intent now or in the future to transfer jurisdiction from constitutional to legislative courts for the purpose of emasculating the former. (Emphasis added).

This distinction was again noted in *Glidden Company v. Zdanok*, 370 U.S. 530 (1962). Justice Harlan (commenting upon Chief Justice Marshall's opinion in *Canter*) observed:

> All the Chief Justice meant, and what the case has ever after been taken to establish, is that in the territories cases and controversies falling within the enumeration of Article III may be heard and decided in courts constituted without regard to the limitations of that Article; courts, that is, having judges of limited tenure and entertaining business beyond the range of conventional cases and controversies. 370 U.S. at 544-45.

Most recently this Court in *Palmore v. United States, supra*, held that Congress under its Article I, §8 power could create a legislative court staffed with judges who are not accorded life tenure and protection against reduction in compensation.

The Court in *Palmore* responded to appellant's contentions that he had a right to be tried before an Article III judge as follows:

> This position ultimately rests on the proposition that Article III judges must preside over every proceeding in which a charge, claim or defense is based on an Act of Congress or a law made under its authority. At the very least, it asserts that criminal offenses under the laws passed by Congress may not be prosecuted except in courts established pursuant to Article III. In our view, however, there is no support for this view in either constitutional text or in constitutional history and practice. 411 U.S. at 400.

The Court went on to state further:

> It is apparent that neither this court nor Congress has read the Constitution as requiring every federal question arising under the federal law, or even every criminal prosecution for violating an Act of Congress, to be tried in an Article III court before a judge enjoying lifetime tenure and protection against salary reduction. Rather, both Congress and this Court have recognized that state courts are appropriate forums in which federal questions and federal crimes may at times be tried; and that the requirements of Article III, which are applicable where laws of national applicability and affairs of national concern are at stake, must in proper circumstances give way to accommodate *plenary grants of power to Congress to legislate with respect to specialized areas having particularized needs and warranting distinctive treatment.* 411 U.S. at 407-408. (Emphasis added).

It is apparent from the foregoing discussion that the error of the court below lies in its failure to understand that the grant of jurisdiction to the bankruptcy courts under the new Bankruptcy Act is *not* co-extensive with the grant of jurisdiction made to the federal courts under Article III. Article III courts enjoy the jurisdiction provided by that Article of the Constitution to the *fullest extent* provided by Congress. *Muskrat v. United States, supra.* The federal court's jurisdiction is in no way diminished by the grant of jurisdiction to a bankruptcy court which will hear plenary matters *only in connection with a bankruptcy proceeding.* Further, while bankruptcy courts now may hear plenary actions, these are actions where jurisdiction would lie in the state courts, or in both state and federal courts as well. Thus, in no sense can federal jurisdiction be said to be diminished.

D. Bankruptcy is a Specialized Area Having Particularized Needs and Warranting Distinctive Treatment.

As this Court in *Palmore v. United States, supra,* noted, the Constitution granted the power to Congress to "legislate with respect to specialized areas having particularized needs and warranting distinctive treatment." Although this question would appear to be resolved by the Constitution itself insofar as Congress is granted the specific power under Article I §8 to establish "* * * uniform laws on the subject of bankruptcies throughout the United States," nevertheless an examination of the particular nature and needs of bankruptcy and bankruptcy courts may be appropriate.

This Court has recognized the particular needs of appropriate administration for bankruptcy and the power of Congress in that regard. In *Taubel-Scott-Kitzmiller Co., Inc. v. Fox,* 264 U.S. 426, 430-31 (1924) it was noted:

> Congress has, of course, power to confer upon the bankruptcy court jurisdiction to adjudicate the rights of trustees to property adversely claimed. In matters relating to bankruptcy its power is paramount. Hence, even if the property is not within the possession of the bankruptcy court, Congress can confer upon it, as upon any other lower federal court, jurisdiction over the person in whose possession the property is.

As is pointed out by the *amicus curiae* brief for the Committee on Bankruptcy and Corporate Reorganization of the Association of the Bar of the City of New York, at 14-21, and by the brief of the Commercial Law League of America, at 4-8, the need for Congress to legislate with respect to a specialized area having particularized needs and warranting distinctive treatment is amply justified in the area of bankruptcy. The volume of cases, the awkward distinction between summary and plenary actions, and the lack of bankruptcy specialists convinced Congress of the particularized need for a bankruptcy court with expanded jurisdiction and powers. A fundamental policy underlying the bankruptcy laws is the desire to effectuate a prompt, efficient and experienced administration and settlement of the affairs of a bankrupt estate. *Katchen v. Landry*, 382 U.S. 323, 328-329 (1966). Congress in its discretion sought to achieve these particular goals by the creation of a new bankruptcy court. This is the very kind of informed judgment made by Congress within one of the areas of enumerated powers that the *Palmore* decision speaks to. For this reason alone the judgment of Congress should not be disturbed.

E. Constitutional Safeguards Have Been Provided by Congress in Enacting the Act.

Congress also was aware of the potential for perceived constitutional tension if the bankruptcy bills pending in Congress were passed into law as sponsored. For that reason, Congress gave careful consideration to the views of constitutional scholars, judges, bankruptcy experts and others before enacting into law the Bankruptcy Reform Act. Hearings were held solely for this purpose. *See*, H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 22; Appendix II. As a result of those intensive deliberations and debates, the Congress enacted bankruptcy legislation which contains procedural and due process safeguards specifically designed to satisfy any constitutional criticisms expressed in those hearings.

The Act vests jurisdiction with the District Court. 28 U.S.C. §1471 (Supp. III 1979). The new bankruptcy court created by the Act exists as an adjunct to the District Court. 28 U.S.C. §1471(c) (Supp. III 1979). Thus, the bankruptcy court is subordinate to, and derives its powers, from the District Court, an Article III court.

Consistent with the principle of delegated powers and authority, appellate review and supervision by Article III judges are provided for in the Act. 28 U.S.C. §1293, 1334 (Supp. III 1979); Pub.L.No. 95-598, §405(c), 92 Stat. 2685. These review functions may be performed either by the District Court or by the Court of Appeals. See, *supra* at 6.[9]

Thus, the Congress carefully sought to avoid any perceived constitutional conflict by ensuring that the bankruptcy courts

---

[9] The Act also provides that the circuit council may direct the Chief Judge of the circuit to designate panels of three bankruptcy judges to hear appeals. 28 U.S.C. §160 (Supp. III 1979).

would operate under the supervision, control and review of Article III courts.

This Court previously has concluded that factfinding need not be undertaken by a tenured Article III officer. *United States v. Raddatz*, 447 U.S. 667, 100 S.Ct. 2406 (1980). In *Raddatz*, this Court held that the delegation of authority to a magistrate to hear live testimony and decide suppression motions in criminal matters did not violate the due process guarantee of the Fifth Amendment and Article III of the Constitution. 100 S.Ct. at 2416. The Court rejected the argument that all factfinding must be before an Article III judge, noting that ultimate review by the District Court satisfied any constitutional or procedural infirmity. *Id.* The decision in *Raddatz* with respect to this issue is consistent with and follows past court decisions in this regard. *Palmore v. United States, supra* at 410; *Crowell v. Benson, supra* at 51-52.

In *Crowell*, the Court upheld the Longshoremen's and Harbor Workers' Compensation Act, which delegated factfinding functions for employee claims to administrative officers. The Court stated that "there is no requirement that, in order to maintain the essential attributes of the judicial power, all determinations of fact in constitutional courts shall be made by judges." *Id.*

In *Palmore*, non-tenured judges appointed to 15-year terms had been empowered by Congressional legislation to hear and decide criminal actions arising in the District of Columbia. In upholding the constitutionality of the legislation, the Court observed, "It is apparent that neither this Court nor Congress has read the constitution as requiring every federal question arising under the federal law, or even every criminal prosecution for violating an Act of Congress, to be tried in an Article

III court before a judge enjoying lifetime tenure and protection against salary reduction." *Palmore, supra,* at 407.

Moreover, the appeal procedure provided in the Act ensures that ultimate review will be made by the District Court or by the Court of Appeals.

Finally, Congress deliberately restricted the judicial powers that may be exercised by bankruptcy judges. Their criminal contempt power is limited and they are prohibited from enjoining proceedings in other courts. 28 U.S.C. §1481 (Supp. III 1979). These restrictions were enacted specifically in response to concerns expressed by various constitutional scholars who testified at the Congressional hearings preceding enactment of the legislation. *See,* H.R. Rep. No. 95-595, *supra,* at 38; Appendix II at 86.

In summary, the Act passed into law by Congress contains certain provisions specifically drafted to cure any constitutional impediment. Such procedures, particularly the grant of jurisdiction to the District Court and delegation of powers to an adjunct bankruptcy court operating under the supervision and control of the District Court, were incorporated in the actual legislation only after careful deliberations and hearings which solicited the differing views of constitutional and other legal scholars. Such safeguards reflect Congress' intent to avoid any constitutional conflict with Article III and to ensure ultimate supervision and review by Article III courts.

CONCLUSION

For the reasons set forth above, appellant Northern Pipeline Construction Co. requests that the Order entered by the District Court below be reversed.

Respectfully submitted,

JOHN L. DEVNEY
JEFFREY F. SHAW
BRIGGS AND MORGAN
2200 First National Bank Bldg.
St. Paul, MN 55101
(612) 291-1215
Attorneys for Appellant
Northern Pipeline
Construction Co.